

Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0821-005071 / Case Ref No: 0521-69604

Appellant Landlord:	Ronan Walsh
Respondent Tenant:	Eoin O'Connor, Almeria Barry
Address of Rented Dwelling:	102 Killeen Wood, Oakpark, Tralee, Co. Kerry, V92K1W2
Tribunal:	Eoin Byrne, Michelle O' Gorman, Dervla Quinn (Chairperson)
Venue:	The Clayton Hotel, Lapps Quay, Cork
Date & time of Hearing:	16 December 2021 at 11:00am
Attendees:	Ronan Walsh, Appellant Landlord Kelly & Co Solicitors, Tribunal Representative Almeria Barry, Tribunal Respondent Tenant Liston & Company Solicitors, Tribunal Representative
In Attendance:	Recording Technician

1. Background:

On 13 May 2021 the Tenant made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 78 of the Act. The matter was referred to an Adjudication which took place on 22 July 2021. The Adjudicator determined that:

1. The termination of the tenancy of the dwelling at 102 Killeen Wood, Oakpark, Tralee, Kerry, V92K1W2, by the Respondent Landlord on the 22nd February 2019 was unlawful.
2. The Respondent Landlord shall pay to the Applicant Tenant the sum of €16,000 in respect of the unlawful termination of the tenancy of the dwelling at 102 Killeen Wood, Oakpark, Tralee, Kerry, V92K1W2 within 42 days of the date of the issue of the Determination Order to the parties.

Subsequently the following appeal was received from the Landlord on 30 August 2021. The grounds of the appeal are Unlawful termination of tenancy (Illegal eviction). The appeal was approved on 13 September 2021.

The RTB constituted a Tenancy Tribunal and appointed Eoin Byrne, Michelle O' Gorman, Dervla Quinn as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Dervla Quinn to be the chairperson of the Tribunal ("the Chairperson").

The Parties were notified of the constitution of the Tribunal and provided with details of the date, time and venue set for the hearing.

On 16 December 2021 the Tribunal convened a hearing at The Clayton Hotel, Lapps Quay, Cork.

2. Documents Submitted Prior to the Hearing Included:

1. RTB File

3. Documents Submitted at the Hearing Included:

none

4. Procedure:

The Chairperson introduced herself and the Tribunal members and asked the parties present to identify themselves. She informed the parties of the presence of the RTB appointed recording technician. The Chairperson confirmed with the parties that they had received from the RTB the case file and that they had read and understood the Tribunal procedures. The Chairperson explained the procedure which would be followed; that the party who appealed the adjudicator's decision (the Appellant) would be invited to present his case first; and that there would be an opportunity for cross-examination by the Respondents. The procedure would then be reversed, and the Respondents would present their case, followed by cross-examination, and that the Tribunal may question the parties on their evidence. The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the official recording technician present. She reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal is an offence punishable by a fine of up to €4,000 and/or up to 6 months imprisonment or both. The Chairperson also stated that as a result of the Hearing that day, the Board would make a Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act]. The parties stated their affirmation before beginning their evidence to the Tribunal.

5. Submissions of the Parties:

The Tenants moved in in 2016. At that point they had no housing assistance. Rent was €650 per month. Mr O'Connor was eager to get on HAP and the Landlord was willing to assist. In the following year they came to an agreement with Kerry County Council where the Landlord would be paid €780 per month. This began 16 October. Mr O'Connor was required to pay €79 per week and on the basis of him paying that sum, the Landlord would receive €575 from HAP and he was to pay the Landlord €205 per month. However Mr O'Connor soon failed to pay the €205 and arrears built up. The Landlord served a notice to vacate in December of 2017 to vacate in January. A determination order issued from the RTB to vacate by 8 January 2019. Throughout this period the Tenants were in arrears and had failed to pay rent on many occasions. The HAP payments of €575 continued, every couple of months, the Landlord would get double payment. The Tenants were constantly behind in payments. The Landlord initially intended to terminate the tenancy as

his brother was returning and would live in the house but after that the Landlord decided to sell the property due to financial pressure. The Landlord contacted a local estate agent, O'Driscoll, who required access for the purpose of showing the property. At the beginning the Tenants were accommodating but after a month or two they decided not to make it available. The agent told the Landlord that there was nothing he could do until the Tenants were gone. Throughout 2018 there were disputes about the rent. The Landlord referred to whatsapp messages regarding rent payments. It was agreed between them that the deposit of €600, would be used as rent for three months of that, so that was €615, and a balance of €15 was owed, so the €420 was a payment towards that. The Tenant owed €3,075 which was only money due from the Tenants. This came before the RTB at a previous dispute at which the Landlord waived the rent due to him as he was looking for possession. It was determined at a tribunal on 23 October 2018 that the Tenants would have to vacate by 8 January 2019.

The Landlord started a case to get the Tenants out. Mr O'Connor then threatened the Landlord and said he would sort him out. The Landlord feared for his mother who lived on the same estate. He had to put cameras into the house and he feared for his families safety. A solicitor told him it could take up to a year to get the Tenants out. The Landlord was financially on his knees.

The Tribunal case was held and the Landlord was told that the Tenants were to be out by 8 January 2019. He then came to Cork and met a solicitor and she told him that everything going on could take time, that it could take 3 months to get a date and that it could take a year after that. The Landlord was financially on his knees. He had to borrow money from family members, that this put a strain on his marriage and that the Tenants did not care about his position. The Tenants were continuously in arrears. The Landlord was owed HAP of €1150 at the end but he received payment in full of the HAP after the Tenants left.

The Tribunal asked the Landlord to give his evidence as to what happened on the day the Tenants left the Dwelling? The Landlord said that he went there with 3 people at about half nine in the morning. He went to the Gardai and told them he was going to enforce his RTB order. He confirmed that he had spoken to a solicitor the day before. He had signed the enforcement papers to enforce the RTB order. The solicitor had suggested that he ask the Tenants to leave. At this stage he was two months in arrear of HAP, and could barely afford Christmas.. He faced financial ruin, was under pressure and depressed.

When the Landlord arrived at the Tenants' door, he knocked and when the Tenant came out he told him he was taking possession of the property. The Tenants then backed into the kitchen, read the letter, there was a bit of roaring and shouting, then things calmed down 10-15 minutes later. The Tenants had called the Gardai and they arrived 10-15 minutes later. The Landlord spoke briefly to the Gardai who went into the house and told the Landlord that the Tenants were going to leave voluntarily. The Landlord then proceeded to take the front door and the glass back door off as he didn't want them getting damaged. He went back a couple of hours later once things had calmed down. The Landlord was referred to photos showing the Tenants possessions in front of the house and he confirmed that he had put them there. The Tenants were packing their stuff during this time. His intention in putting their stuff out the front of the house was to help them. The Tribunal asked had the Tenants requested help from the Landlord. The Landlord stated that when they calmed down, they had asked him to assist them. He replied that he had got the impression that they were grateful for his help. The Tribunal asked and the Landlord confirmed that he had not given the Tenants any indication in advance that he

was going to attend the Dwelling. The Landlord subsequently brought the couch and the table back into the house, when things had calmed down. He agreed with the Tenants that they could come back over the next few days to get their stuff. The Tenants got to take all the belongings they required over a couple of evenings. The doors were put back on that afternoon and the Tenant had returned the keys. The Landlord had removed the doors as he was afraid of them getting damaged. It was now almost three years from the incident but he wished that it had not come to that but he had learned it was going to take another year. The house had not been sold and was now relet. The Landlord had been offered €105000. In hindsight he would do things a lot differently. He had not cut off the electricity and had no hand nor part to it being cut off.

Tenant's questions.

The Tenant's solicitor asked in relation to ESB, was the Landlord expecting the Tribunal to believe that it was fortuitously cut off and that the Landlord didn't do it? The Landlord replied that he did not do it. She asked was there glass in the front door? The Landlord replied not in the actual door but that he did not want the door getting scratched or damaged. She asked whether the locks were changed when the doors were put back? The Landlord replied that he had changed the locks that evening when the doors were back on. She asked had the Landlord taken the doors off to put the Tenants on the street? The Landlord replied that they were not paying rent. He confirmed that they were his tenants from 2016, that they started on HAP in October 2017. She asked had the Landlord had information from the RTB panel solicitors on 20 February 2019 but that two days later he had taken matters into his own hands. The Landlord replied that he admitted that what he did was wrong, but he felt that he was left with no choice, the rent was not paid and the house was not being made available. She asked about the Landlord's first notice in which he stated his brother was returning from Australia. The Landlord replied that his brother then moved to New Zealand. She asked about the next time when he said he wanted to put the property up for sale. The Landlord replied that he did put it up for sale. She asked why there was no mention of arrears of rent. The Landlord replied that they had agreed at that stage that they were going to use the deposit as rent. She asked and the Landlord accepted that the couch and table and chairs were the tenant's items. She asked that on the day in February was there a risk of damage to the Tenants' property. The Landlord replied that it wasn't raining or windy. She asked and the Landlord confirmed that he had got a letter from her on 1 March asking about the Tenants' items. She asked were those items in the house when the tenants went to get them. The Landlord replied that they were. She asked was the Landlord aware that the Tenant was pregnant. The Landlord replied that he was not aware until he came to the door on the day. She asked the Landlord and he confirmed his evidence was that he took the furniture out to give them a helping hand. She asked and the Landlord confirmed that the house was subject to a mortgage. She stated that the Landlord knew well that what he was doing was illegal and had been advised of that by RTB solicitor two days previous. The Landlord replied that he was under pressure for the mortgage but that he did accept now that what he did was wrong. She asked did he accept that he brought six people. The Landlord replied that initially there were four people but that his parents had arrived later. She asked did he accept that the Tenants weren't left with much of an option or was he saying that they agreed to leave. He replied that had they refused to leave he would have returned their stuff but that the gardai had said they were happy to leave. She asked had the doors been removed before or after the gardai had said tenants were happy to leave. The Landlord replied that the doors were removed before the tenants had left. He said that he has admitted he was wrong but that

he was in financial difficulty, in danger of losing the house and had had to borrow money from family. She asked and the Landlord confirmed that he was saying that the Tenants backed into the kitchen when he came into the house. She said that the Tenants would say that they backed up the stairs. She asked and the Landlord admitted to removing the carpet on the stairs even though the Tenants were upstairs. He said that it was dishevelled. She said that the Tenants' evidence would be that they were upstairs in the bedroom and frantically trying to get things because the Landlord's henchmen had removed things. The Landlord replied that he has apologised for how things transpired. The Landlord repeated that there were three men with him and that his father in law arrived later. He commented on the list of items of the Tenants belongings referred to in the adjudicator's report, that there were only old toys left behind, that he had no idea about the X box or the iPad, that the kitchen table had to be given away as the legs were broken and that he had made the house available to them to take whatever they wanted. He denied the suggestion that he had poured bleach over items.

Tenant's evidence.

Almeria Barry's evidence. She stated that she had dropped her kids to school, her 2 year old son was with her and she was 7 months pregnant. She said that the Landlord knocked at door and that when she answered, he barged in and forced her up the stairs. She said that two of the men knew Mr O'Connor and left which left four men and she referred to the photos in the case file. She stated that there were 6 men plus the Landlord and that his parents did not come until an hour later. She stated that there were six people initially, two left because they knew Mr O'Connor but that by the time his parents arrived there were seven people in total. She said that when she opened the door, he barged in and forced them up the stairs into the back bedroom. That they were threatening and abusive towards them and that the video submitted showed threatening and abusive behaviour. She said they literally grabbed the clothes they could and called the gardai to see what legal grounds they had. She said the Gardai said the best advice was to gather the legal documents that they could and vacate the property. She said that they had no choice but to vacate the property. She had to leave to get the kids from school from where she went to her partner's parents in Caherciveen. Her three older children went to her mother's house, and she took her 2 year old with her to her partner's parents' house. She said the doors were not on the property when she left but that the Landlord then put them on and was putting items back in the house as they were leaving. She said that they had made a list of the furniture and belongings that they lost including baby clothes and some items in the attic including her nan's engagement ring. She said that the value was nearly €20,000. She said that the Landlord had caused her a lot of stress, had nearly caused her to go into early labour and that they were forced to go into a homeless shelter in Killarney for six weeks. They were then given a small two bed apartment in Tralee for four months, and that her daughter was born there. They went to Castleisland for a year and then Kerry County Council got them a house in Killeen Woods. She said that the children were in school in Tralee the whole time, that they had to be in Tralee every morning which was a 30 minute drive, that they had to be out of the hostel from 11-4 every day, that they weren't able to cook in the facility and that it was a 20 minute drive from Castleisland to Tralee. She said that her son was sitting his Leaving Certificate that year and that he found it difficult to study when they were in the hostel room.

Landlord's questions.

Counsel for the Landlord asked the Tenant about the amount of people who were there. He stated that his client had said he was there with three other men. The Tenant replied that there were six men there in total, but that two left when they saw that they knew Mr O'Connor after which there were four in total. He asked were people coming and going. The Tenant replied not for the first hour. He asked did the Tenant accept that the man in black was the Landlord's father in law. The Tenant replied that she did not know who the Landlord's father in law was. He asked was it possible that the men just happened to be there. The Tenant replied that there was no reason for them to be down that part of the estate and that they were all wearing hi viz vests. He asked about the Tenants' discussions with the Gardai and had they shown them any documents. The Tenant replied that they didn't show them documents, that they told them what had just happened and that they asked them if they had paperwork and that they should take it with them and go to a solicitor. He asked why they had left. The Tenant replied that their property was in the garden and that the Landlord was not going to leave them in the property, and that he had said he would not put the doors back on until they left. She said that they had no option, that they had been pinned in the back room and that the carpet was ripped up. Counsel then queried the Tenant as to the accommodation they had moved to and the duration of their stay in each place. Counsel then questioned the Tenant on what items of their belongings they had taken with them. The Tenant replied that she had taken clothes and a few toys and that she could not take the food as she had nowhere to put it. She said that they were in a homeless shelter in Killarney and had nowhere to put anything belonging to the children.

Landlord's closing statement.

Counsel on behalf of the Landlord stated that his client had given a full and frank account of what occurred, in the context of what had gone on in the previous two or three years, that the respondents were in arrears of rent, that his client had been intimidated on a number of occasions and that that evidence had not been controverted. In that context his client on 22 February 2019 carried out the eviction, that he had admitted he did wrong and that the Tenants were going to be made homeless and that he did so under an abundance of pressure, family and financial, which had caused him to make a bad judgment which he regretted. He stated that if the Landlord had time back he would not do that and that there were extraordinary excusatory circumstances and these should minimise any award. He stated that it should be taken into account that Mr. O'Connor has refused to give evidence despite previous allegations and notice should be taken of that fact.

Tenant's closing statement

The Tenants' solicitor took issue with the Landlord's counsel's last sentence. She said that Mr O'Connor had chosen not to give evidence, that the matter relates to an illegal eviction only, that what occurred before or after is not relevant. Ms Barry had given evidence, indicated a number of people were there, that there was varying evidence as to the number of people there and that it was not that Mr O'Connor has refused to give evidence but that he had not been called. She said that whether there were marital or financial difficulties, a landlord cannot take the law into his own hand, that he was in any event perfectly aware of that, that two days prior he had taken instructions and advice from the RTB solicitor and he had his own solicitor, and had been advised he should not do that yet he still proceeded to do it. She said that the Tribunal should give weight to who is telling the whole truth, that the Landlord man went in and removed doors to "assist" them in removing goods", that this

is a small housing estate, that all the goods were thrown on the front lawn in the month of February, that Ms Barry had given full evidence of effect on all of them, that they had ended up in homeless accommodation, that they were not brought up to expect that, that they had been forced to Cahersiveen and Castleisland, which was highly traumatic, that the baby had been born homeless and that it was incontrovertible that the Landlord did not lose the property which remains rented.

6. Matters Agreed Between the Parties

The address of the Dwelling is 102 Killeen Woods Oak Park Tralee County Kerry. The tenancy began on 15 April 2016 and ended on 22 February 2019.

7. Findings and Reasons:

An unlawful eviction occurs where a landlord denies a tenant access to their rented dwelling and by attending the Dwelling on 22 February 2019 and removing the doors from the front and back of the Dwelling and placing the Tenants belongings outside the front of the house the Landlord has carried out an unlawful eviction. The Tenants have suffered considerably as a result of this not least because they and their children were made homeless in February but also because Ms Barry was heavily pregnant and the eviction resulted in the loss of a large amount of their personal belongings. The Tenant are entitled to damages of €6,000.00 for loss of their belongings and €12,000 for the suffering caused to them and their family. The Landlord shall pay this sum of €18,000 to the Tenants within 42 days of the date of issue of this determination to the parties.

Reasons for finding: The Landlord acknowledged that the events that took place on 22 February 2019 were wrong and that they resulted in a family becoming homeless. The Landlord's reasons for carrying out the illegal eviction do not mitigate or reduce in any way the gravity of his actions. Where a landlord is found to have carried out an unlawful eviction he/she may be ordered to allow the tenant re-entry into the dwelling and or required to pay damages up to and including €20,000. The Tribunal notes that the Tenants have been rehoused by the county council and are now back in Killeen Woods. The Tribunal believes that the sum of €12,000 is an appropriate sum for damages in these circumstances together with the sum of €6,000 for the replacement costs of the belongings lost as a result of the Landlord's actions in removing the Tenants' property from the house and placing it in front of the house. The Landlord has an obligation under s. 12(1)(a) of the Act to allow the Tenants peaceful and exclusive occupation of a dwelling. Also, in accordance with s. 58 of the Act, a tenancy may only be terminated in accordance with Part Five of the Act. If there is a failure of a party to comply with a notice of termination, the remedy for a landlord is to bring a complaint to the RTB and seek enforcement of the notice and, if a determination order issues, seek enforcement of that order in the Courts. It is not their right to take the law into their own hands and change the locks, summarily terminating a tenancy and, making a tenant homeless. The actions of the Landlord in this case constitute a serious breach of his obligations under the Act. In light of the loss suffered by the Tenants as a result, and with particular regard to the distress caused to the children the Tribunal is satisfied the total sum of €18,000 damages is appropriate in this case. Furthermore as the illegal eviction took place in February of 2019 the Tribunal is satisfied that a payment time of 42 days is appropriate.

The Tribunal accepts that the manner of eviction meant that the Tenants were not able to take all their belongings from the tenancy at the time of the eviction. The fact that they were afforded an opportunity to collect what they wanted does not mean that they were able to take all the belongings they wanted to, or that the belongings left behind were of no value to them. The Tenants were unable to take everything they wanted owing to their own housing situation at that time. That position was caused entirely by the actions of the Landlord. As such, in addition to the damages for the general distress and inconvenience, the Tenants are entitled to damages for the belongings they left behind. Given the evidence as to the age and condition of those items, and with regard to the replacement cost with equivalent items, the Tribunal is satisfied that it should allow the sum of €6,000 in this respect. Given the nature of the inconvenience caused to the Tenants generally and the distress they suffered for over a year, the Tribunal is satisfied that the sum of €12,000 by of general damages should also be allowed, giving the total figure of €18,000 referred to above.

8. Determination:

In the matter of Ronan Walsh (Landlord) and Eoin O'Connor, Almeria Barry (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlord shall pay the total sum of €18,000 to the Respondent Tenants within 42 days of the date of issue of the Determination order in respect of the tenancy of the Dwelling at 102 Killeen Woods Oak Park Tralee Co. Kerry.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 23 December 2021.

Signed:



Dervla Quinn, Chairperson

For and on behalf of the Tribunal.